

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 05-30149-KPN

STEVEN J. MALKE,  
Plaintiff

v.

TRANSCONTINENTAL REFRIGERATED  
LINES, INC.  
Defendant

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**JOINT PRETRIAL MEMORANDUM**

**PLAINTIFF'S CONCISE STATEMENT OF EVIDENCE**

The Plaintiff, Steven Malke alleges he was seriously injured on March 29, 2004, while in the course of employment as a truck driver for Estes Express Lines. On that day he was making a delivery at the Staples in Plainfield, Connecticut. At approximately 11:30 Plaintiff's tractor-trailer was parked and he was standing in the trailer preparing to unload. Suddenly, the Plaintiff was thrown to the rear side of the trailer and knocked into the wall of the trailer, when his trailer was struck by the Defendant's vehicle being driven by George Kozloski. The Plaintiff alleges Mr. Kozlowski knew or should have known that the right trailer door was loose and or the closing mechanism was defective. Notwithstanding that, he pulled out to the Staples lot, the trailer door swung open and struck Plaintiff's trailer causing this accident. Following this accident, Mr. Kozloski drove away. The Plaintiff located the tractor-trailer and driver at a nearby truck stop.

**DAMAGES**

Plaintiff sustained an injury to his neck and right shoulder in this accident. He underwent right shoulder arthroscopic acrimoplasty and distal clavicle excisor on July 13, 2004. Following surgery the Plaintiff progressed slowly with physical therapy and cortisone injections.

The Plaintiff's medical bills are:

1. Urgent Care Physicians Records
  2. Baystate Medical Center Records
  3. Lawrence Field, M.D. Records
  4. Baystate MRI & Imaging
  5. Lahey Clinic records
  6. Paul M. Smiley, M.D.
- Medical Bills totaling \$15,942.59

In addition, the Plaintiff was employed by Estes Express Lines when this accident occurred. His average weekly gross income was \$1,073.80. As a result of his injuries he was totally disabled from March 29, 2004 to November 10, 2004. He continues to experience neck pain, right shoulder pain, hand and arm pain and has restrictions on his activities. In particular, he cannot do heavy lifting or repetitive overhead work. He also has 3 small scars from the surgery. The Plaintiff was not given his job back at Estes and was unable to return to work until May of 2005.

#### DEFENDANT'S CONCISE STATEMENT OF EVIDENCE

Defendant will offer evidence that Defendant was not negligent, that Plaintiff's comparative negligence exceeds any negligence of the Defendant, that Plaintiff's alleged injuries are not causally related to any alleged negligence of Defendant and Defendant will further contest the alleged nature and extent of Plaintiffs' claimed injuries.

#### PLAINTIFF'S STATEMENT OF FACTS

The Plaintiff, Steven Malke, date of birth: 9/9/49, resides at 59 College Street, Chicopee, Massachusetts.

At all relevant time the Plaintiff was employed as a truck driver by Estes Express Lines, located at New Lombard Road, Chicopee, Massachusetts.

On March 29, 2004 the Plaintiff was making a delivery in the course of his employment at Staples at 70 Community Avenue in Plainfield, Connecticut.

The Defendant, Transcontinental Refrigerated Lines, Inc. is located at 180 Armstrong Road, O'Hara Industrial Park, Pittston, Pennsylvania.

The Defendant owned a motor vehicle, which was being operated by George Kozloski on behalf of the Defendant on March 29, 2004.

The Defendant's vehicle identified and described as a 1999 Freightliner and Trailer: 1998 Great Dane 53 Dry Van was being operated by Mr. Kozloski on March 29, 2004 at approximately 11:30 in the Staples lot in Plainfield, Connecticut.

The Plaintiff Steven Malke's vehicle and the Defendant's vehicle were parked next to each other in the Staples parking lot.

While Defendant's vehicle was in the process of leaving the parking area, Defendant's vehicle struck Plaintiff's vehicle.

When the Defendant's vehicle struck the Plaintiff's vehicle, the Plaintiff's vehicle was parked and the Plaintiff, Steven Malke was inside the trailer.

The Defendant's driver, George Kozloski reported this incident by telephone at 11:53 a.m. to the Defendant, on March 29, 2004.

#### DEFENDANT'S STATEMENT OF FACTS

Defendant will offer evidence that Defendant was not negligent, that Plaintiff's comparative negligence exceeds any negligence of the Defendant, that Plaintiff's alleged injuries are not causally related to any alleged negligence of Defendant and Defendant will further contest the alleged nature and extent of Plaintiffs' claimed injuries.

#### STIPULATED FACTS NOT IN GENUINE DISPUTE

At the time of the incident alleged in Plaintiff's Complaint, Plaintiff was employed as a truck driver by Estes Express Lines, located at New Lombard Road, Chicopee, Massachusetts.

On March 29, 2004 the Plaintiff was making a delivery in the course of his employment at Staples at 70 Community Avenue in Plainfield, Connecticut.

The Defendant, Transcontinental Refrigerated Lines, Inc. is located at 180 Armstrong Road, Pittston, Pennsylvania.

The motor vehicle being operated by George Kozloski on March 29, 2004 was being operated by him on behalf of Transcontinental Refrigerated Lines, Inc.

#### CONTESTED ISSUES OF FACT

1. Negligence of Defendant
2. Comparative negligence of Plaintiff
3. Causal relationship of Plaintiff's claimed injuries
4. Nature and extent of Plaintiff's claimed injuries

#### JURISDICTIONAL QUESTIONS

There are no jurisdictional questions.

#### QUESTIONS RAISED BY PENDING MOTIONS

Exclusion of expert testimony raised by Defendant's Motion in Limine.

#### ISSUES OF LAW

None.

#### AMENDMENTS TO PLEADINGS

The Plaintiff has no further request for amendments to the pleadings.

#### ADDITIONAL MATTERS TO AID IN DISPOSITION OF THE CASE

There is a worker's compensation lien.

The Plaintiff was employed at the time of the injury.

George Kozloski's video-taped deposition was taken on June 6, 2006 and will be offered in lieu of live testimony at trial.

#### LENGTH OF TRIAL

The trial is expected to take 2 – 3 days.

#### PLAINTIFF'S PROPOSED WITNESSES

1. Steven Malke  
He is expected to testify regarding how the accident happened as well as what his injuries and medical treatment were and how this effected his ability to work.
2. George Kozlowski  
He is expected to testify regarding the events on March 29, 2004.
3. Janet Malke  
She is expected to testify about her husband's condition after the accident based on her observations.
4. Lawrence Field, M.D., is expected to testify regarding her care and treatment.
5. Paul Smiley, M.D., is expected to testify about his treatment of the Plaintiff's injuries including surgery and follow up treatment.

#### DEFENDANT'S PROPOSED WITNESSES

1. George Kozloski  
He is expected to testify via a video-taped deposition taken on June 6, 2005. His testimony largely concerns the events of March 29, 2004.
2. Richard M. Jones, CRM, Director, Risk Management, TRL, Inc.  
He is expected to testify regarding TRL's relevant policies and practices.
3. KOR and/or other representative of Estes Express Lines.
4. KOR and/or other representative of Staples, Inc.
5. Lawrence B. Keller and/or other representative of Crawford Claim Management Services.

6. KOR and/or other representative of necessary to authenticate medical records and bills regarding Plaintiff's medical treatment at, with, including but not limited to, Johanna Cichon, M.D., New England Orthopedic Surgeons, Family Care Medical Center.

PLAINTIFF'S PROPOSED CONTESTED EXHIBITS

1. Photographs of the Plaintiff
2. Photographs of the tractor-trailer
3. Plaintiff's Tax Returns
4. MRI of Plaintiff's neck dated 4/16/04
5. MRI of the Plaintiff's shoulder dated 4/29/04
6. Medical Records and bills of Urgent Care Physicians Records
7. Medical Records and bills of Baystate Medical Center Records
8. Medical Records and bills of Lawrence Field, M.D. Records
9. Medical Records and bills of Baystate MRI & Imaging
10. Medical Records and bills of Lahey Clinic records
11. Medical Records and bills of Paul M. Smiley, M.D./Lahey Clinic
12. Plaintiff's Report of the Accident
13. George Kozloski Report of the Accident

DEFENDANT'S PROPOSED CONTESTED EXHIBITS

1. Medical records and bills of Plaintiff's treatment with, including but not limited to, Johanna Cichon, M.D., New England Orthopedic Surgeons, Family Care Medical Center
2. Bill of Lading (marked at Kozloski deposition)
3. Shipping manifest (marked at Kozloski deposition)
4. Photographs (marked at Kozloski deposition)
5. Photographs of Plaintiff's tractor
6. Photographs of the subject Staples facility
7. Photographs taken at the scene of the incident
8. Documents produced by Estes Express Lines pursuant to subpoena
9. Documents produced by Staples, Inc., pursuant to subpoena
10. Documents produced by the Zurich American Ins. Co. pursuant to subpoena
11. Documents produced by TRL, Inc.

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Filed separately.

DEFENDANT'S PROPOSED JURY INSTRUCTIONS

Filed separately.

PLAINTIFF'S SPECIAL VERDICT

Filed separately.

The Plaintiff, Steven J. Malke  
By His Attorney,

\_\_\_\_\_/s/ John D. Ross, III \_\_\_\_\_  
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The Defendant, TRL, Inc.,  
By its Attorney,

\_\_\_\_\_/s/ Andrew J. Fay \_\_\_\_\_  
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